

### REMARKS

Applicants respectfully request entry of the amendments and reconsideration of the claims in light the present amendments.

Claims 17, 18, 20, 24, 31 and 33-43 are pending in the application.

Claims 9, 23, 25-30 and 32 have been cancelled by this amendment.

Claims 17, 20, 33 and 36 have been amended. No new matter has been added.

#### Rejection under 35 U.S.C. § 112, paragraph 1

Claims 17, 18, 20, 23, 24, 31 and 33-41 stand rejected under 35 U.S.C. § 112, paragraph as failing to comply with the written description requirement. The Examiner argues the claims contain subject matter which was not described in the specification. The Examiner argues “class Insecta” appears to be new matter. Applicants respectfully disagree. Applicants assert that a pest selected from the class Insecta is an insect, and as such is clearly supported in the specification. However, Applicants have amended claims 17 and 33 to remove the language “pests selected from the class Insecta” and replace the language with “insects”.

Applicants respectfully request the Examiner to withdraw the rejection.

#### Rejection under 35 U.S.C. § 103(a)

Claims 17, 18, 20, 23, 24, 31 and 33-43 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mainfisch et al. (US 5,852,012) and the Agrochemical Handbook.

The Examiner has responded to the Applicant’s argument that the declarations filed contained mixed results in tables 2a, 2b, 2c, 2d and 2e for a combination of abamectin and thiamethoxam.

Applicants have added amended claims 17, 20, 33 and 36 to recite “insects” Applicants note that that the species *Tetranychus urticae*, which data is provided for in Tables 2d and 2e is not an insect. Accordingly, Applicants submit that the data presented in Table 2d and 2e is not relevant to claim 33 and claims dependent thereon.

Further, in the previous amendment filed by Applicants, Applicants added new claim 42 which recites, "A composition for controlling pests comprising a synergistically effect amount of thiamethoxam and abamectin."

Applicants note the Declaration of Leslie Fuquay, presented with Request for Continued Examination filed February 29, 2009, which presents the adjusted mortality of Table 2c based on a water and check having a 12 % mortality. Applicants respectfully submit the increased Corrected Factor is further evidence of the unexpectedness of the combination. Applicants reproduce the Factor and Corrected Factor from the Fuquay Declaration below:

Factor (F/E)	Corrected Factor (F/E)
0.74	1.04
0.87	2.00
0.59	0.60
0.87	#DIV/0!
0.96	#DIV/0!
0.79	#DIV/0!
1.29	16.00
2.25	33.00
1.44	2.21
1.26	1.38
1.83	9.33
1.39	2.06
1.12	1.20
1.00	1.00
1.05	1.48
1.22	1.33
1.00	1.00
1.21	1.31
0.98	0.98

Applicants note that "#DIV/0!" is presented where the Expected Value = 0, and the Found Value was greater than zero.

In view of the present claims, Applicants respectfully submit that the data presented in the declaration of Elke Hillesheim provides the requisite evidence to rebut the Examiner's *prime*

*facie* case of obviousness. Applicants respectfully submit that the comparative data taken as whole found in Tables 2a- 2c provides for evidence of unexpectedness.

In light of the amendments and arguments set forth above, Applicants respectfully request reconsideration and allowance of all of the pending claims.

The Commissioner is hereby authorized to charge any additional fees under 37 CFR §1.17 which may be required, or credit any overpayment, to Account No. 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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